

The Hotel Operators' Occupation Tax Act imposes a tax upon persons engaged in the business of renting, leasing or letting rooms in a hotel. See 86 Ill. Adm. Code 480.101. (This is a GIL.)

February 20, 2002

Dear Xxxxx:

This letter is in response to your letter dated October 4, 2001 and the additional information you have provided at our meeting and in recent telephone conversations. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found on the Department's website at <http://www.revenue.state.il.us/Laws/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

This is a request for a General Information Letter pursuant to the provisions of 2 Ill. Admin. Code 1200, on behalf of a client who operates a corporate technical training facility in Illinois. We are seeking reassurance from the Department that the Illinois Hotel Operators' Occupation Tax does not apply to the gross receipts of the facility received for lodging and the Retailers' Occupation Tax does not apply to the gross receipts received from meals provided to persons attending training courses at the facility.

## **FACTS**

The client is an established national leader in technical training. It has trained over 750,000 people over the past 33 years. The facility is ISO certified. The Illinois campus consists of classrooms, meeting and conference rooms, a dining facility, lodging rooms, and recreational facilities.

The training courses are generally short term; usually individual class sessions are less than two weeks in duration. Many courses are held several times a year. Typically class size is small and the instruction emphasizes an individual oriented hands on experience. The facility uses a large inventory of state of the art industry equipment in its classes to provide students with hands on experience with the vendor equipment that they will work with on the job. The courses and sequence of courses are designed to meet the requirements of industry professional certification programs and continuing education programs. A number of courses qualify for fully accredited university credit. In addition to the resident courses, the client also provides an extensive array of courses that are taught 'on-site' at a customer's location and an 'e-learning program' that provides multimedia course materials for individual study and corporate intranet learning centers.

The training facility was established to provide high quality technical training for an industry that required a broad spectrum of technical training for its employees. In the early years, the facility functioned as an in house or internal training facility. Over the years the corporate structure and customers of the client have changed. The client has now become a separate and independent legal entity and training is now being provided for employees of many different customers. The number and content of courses has increased with the changes in industry technology but the basic mission of providing high quality hands on technical training to the industry has not changed. While training is provided to a broad spectrum of business and governmental clients, about 85% of the class days of training are provided to 14 companies.

Typically, students attending resident training courses will stay at the facility for the duration of the course. Training, lodging and meals are usually sold to a customer as a package. It is possible to identify and breakout the costs for various services. Students may elect not to eat meals at the facility and may elect not to stay at the facility while attending training. However, the dining and lodging facilities are not available to the public or persons not attending training classes or conferences.

The facility is also available and used as a conference center where meetings or training are conducted by outside parties. Such events are not related to the educational training course offerings of the client and the client does not exercise control over the content or conduct of such events. The client simply provides meeting space, and facility support such as lodging and meals if requested by the conference. The conference activity at the facility is about 6% of the total activity at the facility.

## **LAW**

1. The Illinois Hotel Operators' Occupation Tax, 35 ILCS 145/2 imposes tax upon persons engaged in the occupation of renting of sleeping rooms to the public. It excludes permanent residents, defined as any person who occupied or has the right to occupy any room or rooms, regardless of whether or not it is the same room or not for a period of 30 days or more.
2. The Department's regulation 86 Ill. Admin. Code, § 480.101 (b) (4), set forth below, recognizes that the renting of rooms to students enrolled in courses is not the renting of rooms to the public.

'There is no exemption simply because the lessor of the rooms is a nonprofit organization, such as a church, charity or school. However, a college or other school is not subject to the tax on its receipts from renting rooms to its students for use as living quarters or for sleeping or housekeeping accommodations because this is not the renting of the rooms to the 'public'. Nevertheless, if the school rents rooms for such purposes to persons who are not enrolled with the school in courses of study for credit, such renting is not being done to students, but is being done to the 'public', and the school incurs Hotel Operators' Occupation Tax liability on its rental receipts from this activity, if such lessees do not qualify as permanent residents.'

3. Similarly the Department's Regulation, 86 Ill. Admin. Code § 130.2005 (b) (4) (A) states that schools do not incur tax on sales of meals to students in closed cafeterias

(b) (4) Special Problems Concerning Sales by Schools

A) Dining Facilities

A school does not incur Retailers' Occupation Tax liability on its operation of a cafeteria or other dining facility which is conducted on the school's premises, and which confines its selling to the students and employees of the school. In any instance in which the dining facility is opened up for the use of other persons, all sales that are made at such facility while that condition continues to prevail are taxable.

4. Northwestern University v City of Evanston, 221 Ill App 3d 893 (1991) The appellate court held that the Municipal Hotel Operators' Occupation Tax did not apply to the rental of rooms to students enrolled in courses at the university
5. PLR ST 01-0023 June 25, 2001
6. PLR ST 92-0332 June 30, 1992
7. GIL ST 94-0338 Aug 10, 1994
8. GIL ST 98-0085 Mar 20, 1998

**Taxpayer's Position**

1. Training Courses: We do not believe that the client is engaged in the occupation of renting rooms to the public and therefore is not subject to the tax imposed by the Hotel Operators' Occupation Tax. The lodging provided to students who are attending classes at the campus in Illinois is not available to the public. Other than conference attendees, no lodging is provided to any person who is not enrolled in and attending training sessions. The campus facilities are not open to the public. The client does not advertise any availability for lodging. The client does not accept any overflow guests or referrals from hotels.
2. Conferences: We believe that the client is subject to Hotel Operators' Occupation Tax on lodging rooms and Retailers' Occupation Tax on meals provided to persons attending outside conferences held at the facility. While the client's revenue from conferences is very small and conference attendees are clearly not the public in general as their stay is in conjunction with and limited to term of the conference, the operation of a conference center that provides lodging is very similar to the operation of a hotel that hosts conferences. This position is also set forth in the Department's regulation.

Meals provided to students by schools and hospitals in cafeterias 'closed to the public' are not subject to tax. We believe that the meals provided to the students attending classes at the campus in Illinois are exempt from tax. However, we acknowledge that meals and refreshments sold to persons attending outside conferences at the campus are subject to Retailers' Occupation Tax.

Students attending classes are individually billed for training, lodging and meals as a package. Organizations holding conferences are billed for the use of the facility and refreshments. If overnight lodging and meals are provided to persons attending a conference the organization is again billed, these items can be easily identified and the proper rate of tax collected. It is not necessary to individually identify taxable and nontaxable diners at the time they order meals as a flat rate is charged for the meals and the tax status of the diner is established at the time of registration for the class or conference. Persons eating at the facility do not and cannot pay for meals at the cafeteria. The tax status of a person attending a conference or enrolled in a class will be easily ascertained from the client's records.

This system is similar to the meal charge arrangements at colleges where a lump sum is charged for meals on a per semester basis.

### **Ruling Requested**

We request confirmation that the Illinois Hotel Operators' Occupation Tax does not apply to the gross receipts of the facility received for lodging and the Retailers' Occupation Tax does not apply to the gross receipts received from meals provided to students attending training courses at the campus facility in Illinois.

Confirmation that the Illinois Hotel Operators' Occupation Tax does apply to the gross receipts of the facility received for lodging and the Retailers' Occupation Tax does apply to the gross receipts received from meals provided to persons attending outside conferences held at the facility in Illinois.

If the Department anticipates issuing a letter contrary to the ruling requested we ask to be notified in advance and be permitted to address any concerns raised within the Department prior to the time the response is sent. Additionally, if you have any further questions or need additional information please call me.

### **DEPARTMENT'S RESPONSE:**

The Hotel Operators' Occupation Tax Act imposes a tax upon persons engaged in the business of renting, leasing or letting rooms in a hotel. See the enclosed copy of 86 Ill. Adm. Code 480.101. The tax applies to gross receipts received from a person who occupies a room or becomes irrevocably liable to pay rent for the right to occupy a specific room or rooms. The only exemptions available to a hotel operator are for rentals to permanent residents and to certain diplomatic personnel. Permanent residents are persons who occupy or have the right to occupy such rooms for at least thirty consecutive days. See 86 Ill. Adm. Code 480.101(a)(1).

Subsection (b)(4) of Section 480.101 of the Department's administrative rules regarding the Hotel Operators' Occupation Tax provides that:

'a college or other school is not subject to the tax on its receipts from renting rooms to its students for use as living quarters or for sleeping or housekeeping accommodations because this is not the renting of the rooms to the 'public'. Nevertheless, if the school rents rooms for such purposes to persons who are not enrolled with the school in courses of study for credit, such renting is not being done to students, but is being done to the 'public', and the school incurs Hotel Operators' Occupation Tax liability on its

rental receipts from this activity, if such lessees do not qualify as permanent residents.'

86 Ill. Adm. Code 480.101.

Rentals of rooms or apartments to persons who are not currently enrolled with a college or other school in courses of study for credit are considered rentals to the public at large and are subject to Hotel Operator's Occupation Tax liability. The Department will consider persons to be "enrolled in courses of study for credit" with a college or other school if those persons are attending classes or programs that are held by a college or other school (not some other organization), and if some form of credit or other recognition of completion is granted by that college or other school for completion of those classes or programs. The providing of lodging to those persons would not be considered rentals to the public. Rentals to organizations or individuals who are attending programs put on by an organization other than a college or other school would be considered rentals to the public and be subject to Hotel Operators' Occupation Tax liability. This analysis conforms to the Northwestern University court decision referenced in your letter.

If the training facility described in your letter issues credit for the courses taken by the student, then the lodging provided to those students in conjunction with those courses of study would generally not be subject to Hotel Operators' Occupation Tax liability. These types of rentals are not in competition for the same clientele as hotels or motels.

However, lodging provided to attendees at meetings or conferences that are conducted by third parties would be subject to Hotel Operators' Occupation Tax liability. In that situation, if only a single charge is made for lodging, meals, and instruction activities, the proportionate amount of that charge for lodging should be recorded in the school's books and records for determining the proper amount of Hotel Operator's Occupation Tax liability. If such an amount is not recorded in school's books and records and it is audited by the Department, the Department will use its best judgment and information to assign a value to the lodging component of the total charge.

A college or other school does not incur Retailers' Occupation Tax liability on its operation of a cafeteria or other dining facility which is conducted on the school's premises, and which confines its selling to the students and employees of that school. If the dining facility is opened up for the use of other persons, all sales that are made at such facility are subject to Retailers' Occupation Tax liability. See 86 Ill. Adm. Code 130.2005(b)(4).

In a school or college campus setting, this means that sales of meals in a closed dormitory cafeteria are exempt but all food sales in a student union type setting, including sales to students, are taxable. The regulatory provisions and the closed cafeteria concept have been in effect for many years and two purposes are served. The first purpose served by the closed cafeteria concept is to solve the practical impossibility that the Department would face when auditing an open facility in verifying that all of the sales claimed to be exempt were, in fact, made to students. The second purpose served by the closed cafeteria concept is the protection of retailers in competition with the school's open facility. That is, student union type (open to the public) selling competes with area food service establishments for student purchases as well as for purchases by the public. Please note that if lodging is provided by a school to attendees at meetings or conferences that are conducted by third parties and the persons attending those meetings or conferences eat at the school's cafeteria or dining facility, the school's cafeteria or dining facility is considered to be open to the public and, except as provided below, all sales that are made at such a facility are subject to Retailers' Occupation Tax liability.

You have informed us that while the food service facility described in your letter is not open to the general public, the facility does provide food to both students of the training facility and attendees

at meetings or conferences that are conducted by third parties at the training facility. In this mixed-use context, all sales (including sales to students) will generally be taxable since the facility is considered to be open to the public for sales tax purposes. However, if the facility has a mechanism (such as a declining-balance card system or other method) for identifying and documenting, at or before the time of sale, the nontaxable sales of food to students, then the sales of food to those students will not be subject to Retailers' Occupation Tax liability. In such cases, sales to attendees at meetings or conferences that are conducted by third parties at the training facility will remain subject to tax.

When the charge for the meals is included in the single charge for the instruction, meals, and lodging and the charges for the meals are subject to tax, the proportionate amount of that charge for the meals should be recorded in the school's books and records for determining the proper amount of Retailers' Occupation Tax liability. If such an amount is not recorded in the school's books and records and it is audited by the Department, the Department will use its best judgment and information to assign a value to the meal component of the total charge.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b) described above.

Very truly yours,

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Associate Counsel

TDC:msk  
Enc.